THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MONIQUE BROWN, on behalf of herself, individually, and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No. 1:16-cv-10667**
v.	)	
HEALTH RESOURCE SOLUTIONS, INC., GLENN STEIGBIGEL and ROBERT MIKULAK,	)	
Defendants.	)	
	)	**JURY TRIAL DEMANDED**

COLLECTIVE AND CLASS ACTION COMPLAINT

Plaintiff MONIQUE BROWN, individually and on behalf of all other similarly situated employees ("Plaintiffs"), by and through her counsel, brings this collective action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and class action under Federal Rule of Civil Procedure 23 and the Illinois Minimum Wage Law ("IMWL"), 820 ILCS § 105/1, *et seq.*, against Defendants HEALTH RESOURCE SOLUTIONS, INC., GLENN STEIGBIGEL and ROBERT MIKULAK (collectively, "Defendants"), and allege upon personal belief as to herself and her own acts, and as for all other matters, upon information and belief, and based upon the investigation made by her counsel, as follows:

NATURE OF THE ACTION

1. This action arises out of Defendants' systematic, companywide wrongful classification of Named Plaintiff and other similarly situated home health clinicians as exempt from the overtime

compensation requirements of the FLSA and IMWL. These persons worked for Defendants as registered nurses, physical therapists, occupational therapists, speech therapists, and other similarly-designated skilled care positions whose primary duties involved providing health care services to patients in their homes (collectively "Clinicians").

2. For an employer to properly exempt an employee from the overtime compensation requirements of the FLSA and IMWL, Defendants must strictly and affirmatively establish both that the employee performs duties which meet one of the categories for exemption, and also that the employee is compensated on either a "salary" basis or a "fee" basis. Defendants, pursuant to their standardized pay practices and policies, pay Plaintiffs on a combined "per visit" and hourly basis. This hybrid "per visit" and "hourly basis" pay scheme does not comport with either the salaried basis or the fee basis requirements of the FLSA or the IMWL. Accordingly, Defendants cannot meet their burden of establishing Plaintiffs are exempt and have wrongly deprived Plaintiffs of earned overtime compensation in violation of the FLSA and IMWL.

3. During the relevant statutory period, Defendants have maintained a corporate policy and practice of paying Clinicians pursuant to a compensation method which includes "per visit" payments for some work, hourly payments for other work, and no payments whatsoever for other work performed outside of the time spent in the patients' homes.

4. Defendants pay Clinicians on a "per visit" basis for time spent visiting patients based on a set visit rate for each visit completed of a certain type. For example, all routine visits are paid at a Clinician's routine visit rate, and start of care visits, recertification visits, resumption of care visits, and discharge visits are paid at other set rates. These visit rates are based on the amount of time in the home and documentation time required for each type of visit, and thus home visits that require more time and documentation are paid at higher rates.

5. Defendants pay Clinicians at an hourly rate of pay for time spent on certain tasks, including but not limited to, time spent in staff meetings, continuing education training, orientation, in-services, and time spent working in the office.

6. Defendants do not pay Clinicians any sums for a wide array of work-related tasks they were required to perform on a regular basis, including: preparing for patient visits; communicating with patients, physicians and case managers about scheduling, patient-care and logistical matters; coordinating patient care with other providers; traveling between patients' homes; documenting information from patient visits ("charting"); and ordering, organizing, or retrieving equipment and supplies to be used during their home visits.

7. Based upon their compensation practice and policy, Defendants uniformly misclassify Clinicians as exempt employees.

8. Defendants failed to compensate Plaintiffs for all overtime wages earned.

9. Accordingly, Defendants are liable for their failure to pay Named Plaintiff and other similarly-situated employees for time worked in excess of forty (40) hours in given workweeks at one and one-half times their regular rate.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer … in any Federal or State court of competent jurisdiction."

11. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

12. This Court has supplemental jurisdiction over Named Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because Defendants

operate within this district and because a substantial part of the events and omissions giving rise to the claims pleaded in this Complaint occurred within this district.

PARTIES

14. Plaintiff MONIQUE BROWN is a resident of Illinois who worked for Defendants as a Clinician during the applicable statute of limitations period and was paid on a combined "per visit" and hourly basis.

15. During the relevant time period, MONIQUE BROWN was an "employee" of Defendants as defined by the FLSA, 29 U.S.C. § 203(e)(1) and IMWL 820 ILCS § 105/3(d).

16. At all relevant times, Defendant HEALTH RESOURCE SOLUTIONS, INC., has been a New Jersey corporation with its principal place of business located at 1806 South Highland Avenue in Lombard, Illinois.

17. Defendant GLENN STEIGBIGEL is a co-owner, president and CEO of HEALTH RESOURCE SOLUTIONS, INC.

18. At all material times, GLENN STEIGBIGEL was involved in the day to day business operations of HEALTH RESOURCE SOLUTIONS, INC., exercised financial control over HEALTH RESOURCE SOLUTIONS, INC., and had the authority to hire and fire Clinicians, the authority to direct and supervise the work of Clinicians, the authority to promote, demote and otherwise discipline Clinicians, the authority to enter into agreements with Clinicians on behalf of the corporate Defendants, the authority to establish and change the terms and conditions of employment for Clinicians, the authority to sign on corporate checking accounts, including payroll accounts, for the corporate Defendant, and the authority to make decisions regarding wage and hour classifications, compensation (including providing bonuses and raises), timekeeping and capital expenditures. At all relevant times, GLENN STEIGBIGEL acted and had responsibility to

act on behalf and in the interests of HEALTH RESOURCE SOLUTIONS, INC. in devising, directing, implementing and supervising the wage and hour practices and policies relating to Clinicians, including those challenged in this action. At all relevant times, GLENN STEIGBIGEL had the specific authority to classify Clinicians as exempt or non-exempt under federal and state wage laws, and to pay or not pay them time and a half their regular rate of pay for time Clinicians work in excess of 40 hours in given workweeks.

19. Defendant ROBERT MIKULAK is also a co-owner of HEALTH RESOURCE SOLUTIONS, INC.

20. At all material times, ROBERT MIKULAK was involved in the day to day business operations of HEALTH RESOURCE SOLUTIONS, INC., exercised financial control over HEALTH RESOURCE SOLUTIONS, INC., and had the authority to hire and fire Clinicians, the authority to direct and supervise the work of Clinicians, the authority to promote, demote and otherwise discipline Clinicians, the authority to enter into agreements with Clinicians on behalf of the corporate Defendants, the authority to establish and change the terms and conditions of employment for Clinicians, the authority to sign on corporate checking accounts, including payroll accounts, for the corporate Defendant, and the authority to make decisions regarding wage and hour classifications, compensation (including providing bonuses and raises), timekeeping and capital expenditures. At all relevant times, ROBERT MIKULAK acted and had responsibility to act on behalf and in the interests of HEALTH RESOURCE SOLUTIONS, INC. in devising, directing, implementing and supervising the wage and hour practices and policies relating to Clinicians, including those challenged in this action. At all relevant times, ROBERT MIKULAK had the specific authority to classify Clinicians as exempt or non-exempt under federal and state wage laws, and to pay or not pay them time and a half their regular rate of pay for time Clinicians

work in excess of 40 hours in given workweeks.

21. At all relevant times, each Defendant was an "employer" as defined by the FLSA, 29 U.S.C. § 203(d) and IMWL, 820 ILCS § 115/2.

FACTUAL ALLEGATIONS

22. Plaintiff MONIQUE BROWN and all the similarly-situated Clinicians she seeks to represent, were required, among other things, to provide care to patients in their homes, complete documentation of patient health and visits ("charting"), communicate with patients, physicians and other medical care providers, and participate in various meetings and training. Defendants compensated Plaintiffs at a base rate for routine visits and at higher rates for other types of visits, like start of care visits, recertification visits, and resumption of care visits, all of which require more documentation and consume more time than routine visits.

23. Defendants compensated Plaintiffs at an hourly rate for time spent in staff meetings, continuing education training, orientation, in-services, and time spent working in the office.

24. Defendants failed to compensate Plaintiffs for a wide array of work-related tasks they were required to perform on a regular basis, including: preparing for patient visits; communicating with patients, physicians and case managers about scheduling, patient-care and logistical matters; coordinating patient care with other providers; traveling between patients' homes; documenting information from patient visits ("charting"); and ordering, organizing, or retrieving equipment and supplies to be used during their home visits.

25. Defendants classified Plaintiffs as exempt employees under the FLSA and IMWL and did not pay them overtime wages despite working in excess of forty (40) hours in given workweeks.

26. Defendants directed Plaintiffs to work, and they routinely did work, in excess of forty (40) hours in given workweeks, but were not compensated for overtime wages earned at a rate of one

and one-half times their regular rate.

27. Defendants misclassified Plaintiffs as exempt from overtime compensation under the FLSA and IMWL.

28. Defendants suffered and permitted Plaintiffs to work more than forty (40) hours per week without overtime pay.

29. Defendants did not keep accurate records of all of the hours worked by Plaintiffs.

30. Defendants were aware, or should have been aware, that Plaintiffs performed non-exempt work that required payment of overtime compensation. For instance, because Defendants assigned Plaintiffs their work and required them to work long hours to complete all of their job duties and responsibilities, Defendants knew or should have known that Plaintiffs worked overtime hours.

FLSA COLLECTIVE ACTION ALLEGATONS

31. Named Plaintiff brings claims on her own behalf and as a representative of all other similarly situated individuals pursuant to the FLSA, 29 U.S.C. § 216(b), to recover unpaid wages, unpaid overtime compensation, liquidated damages, statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

32. Named Plaintiff brings this action under the FLSA on behalf of the following collective class of similarly situated employees:

> All persons who worked as home health Clinicians for Defendants at any time since three (3) years prior to the filing of this Complaint through the date of judgment in this action, and who were classified as exempt, were paid on a hybrid "per visit" and hourly basis, and were not paid overtime compensation for time worked in excess of forty (40) hours in given workweeks (the "FLSA class").

33. Named Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Named Plaintiff's signed consent form and the consent form of four additional FLSA class members are attached as Group Exhibit A. As this case proceeds, it is likely that other

individuals will file consent forms and join as "opt-in" plaintiffs.

34. This action is properly maintained as a collective action because the representative Plaintiff is similarly situated to the members of the FLSA class with respect to their training, job duties and compensation plan, and are all subject to a common practice, policy or plan in which Defendants suffered and permitted them to perform work for the benefit of Defendants in excess of forty (40) hours in given workweeks without compensation at time-and-a-half their regular rate of pay.

35. Defendants knew or should have known that they had misclassified Plaintiffs as exempt.

36. Defendants knew or should have known that Plaintiffs worked in excess of forty (40) hours in given workweeks.

37. Defendants' conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255.

38. There are over fifty (50) similarly situated current and former Clinicians who Defendants misclassified in violation of the FLSA and who would benefit from the issuance of court-supervised notice and an opportunity to join the present action if they choose.

39. The precise number of FLSA class members can be easily ascertained by using Defendants' payroll and personnel records. Given the composition and size of the class, members of the FLSA class may be informed of the pendency of this action directly via U.S. mail, e-mail and otherwise.

IMWL CLASS ALLEGATIONS

40. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Named Plaintiff brings claims on her own behalf and as a representative of all other similarly situated individuals pursuant to the IMWL, 820 ILCS 105/1, *et seq.*, to recover unpaid wages, unpaid overtime compensation, unlawfully withheld wages, statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

41. Section 105/4(a) of the IMWL requires employers to pay employees one and one-half times their regular rate for all hours worked over forty (40) per work week. Section 105/12 of the IMWL provides that employers who violate the provisions of the IMWL are liable to affected employees for unpaid wages, costs, attorney's fees, damages of 2% of the amount of any such underpayment for each month following the date of underpayments, and other appropriate relief.

42. Plaintiff seeks class certification under Rule 23 of the Federal Rules of Civil Procedure for the following class of similarly situated employees under the IMWL:

> All persons who worked as home health Clinicians for Defendants at any time since three (3) years prior to the filing of this Complaint through the date of judgment in this action, and who were classified as exempt, were paid on a hybrid "per visit" and hourly basis, and were not paid overtime compensation for time worked in excess of forty (40) hours in given workweeks (the "IMWL class").

43. This action is properly maintained as a class action under Rules 23(a) and (b) because:

A. The class is so numerous that joinder of all members is impracticable;

B. There are questions of law or fact that are common to the class;

C. The claims of the Named Plaintiff are typical of the claims of the class; and,

D. The Named Plaintiff will fairly and adequately protect the interests of the class.

Numerosity

44. The total number of putative class members exceeds fifty (50) individuals. The exact number of class members may easily be determined from Defendants' payroll records.

Commonality

45. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the IMWL class in that Named Plaintiff and all members of the class have been harmed by Defendants' failure to compensate current and former Clinicians for all time worked in excess of forty (40) hours in given workweeks. The common questions of law and fact include, but not limited to the following:

A. Whether Defendants can meet their burden of proving they properly classified Named Plaintiff and the class as exempt from the overtime requirements of the IMWL;

B. Whether Defendants failed to keep true and accurate records of the amount of time Named Plaintiff and the class actually worked; and,

C. Whether Named Plaintiff and the class suffered damages and the proper measure of those damages.

46. Plaintiffs anticipate that Defendants will raise defenses that are common to the class.

Adequacy

47. The Named Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Named Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel that are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel specifically for wage and hour litigation.

Typicality

48. The claims asserted by the Named Plaintiff are typical of the class members she seeks to represent. The Named Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

49. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action pursuant to Rule 23.

Predominance and Superiority

50. The common questions identified above predominate over any individual issues, which

will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

51. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to, fashion methods to efficiently manage this action as a class action.

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS ACT

52. Plaintiffs incorporate by reference all preceding paragraphs.

53. Named Plaintiff and other Clinicians employed by Defendants are similarly situated within the meaning of the FLSA, 29 U.S.C. § 216(b).

54. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to at

least one and one-half times the employee's regular rate of pay, for all hours worked in excess of forty (40) hours per week.

55. Defendants willfully engaged in a practice of violating the FLSA by misclassifying Named Plaintiff and similarly situated employees as "exempt," and thereby failing and refusing to pay them the overtime wage compensation as required by law and in accordance with Sections 206 and 207 of the FLSA.

56. Named Plaintiff and members of the FLSA class are not subject to any exemption.

57. Defendants failed to create or maintain accurate records of the time Named Plaintiff and the FLSA class worked in violation of the FLSA, 29 U.S.C. § 211(c).

58. As a result of Defendants' violations of the FLSA, Named Plaintiff and the FLSA class have suffered and will continue to suffer a loss of income and other damages.

59. Defendants did not make a good faith effort to comply with the FLSA with respect to the compensation of their Clinicians.

60. As a result of Defendants' unlawful acts, they are liable to Named Plaintiff and the FLSA class for actual damages, liquidated damages and equitable relief, pursuant to 29 U.S.C. § 216(b), as well as reasonable attorneys' fees, costs and expenses.

COUNT II

VIOLATION OF ILLINOIS MINIMUM WAGE LAW

61. Named Plaintiff incorporates by reference all preceding paragraphs.

62. Named Plaintiff is a member of a class that meets the requirements for certification and maintenance of a class action pursuant to Rule 23.

63. The IMWL, 820 ILCS § 105, *et seq.*, requires employers to pay employees minimum wages for all hours worked. Section 105/4(a) of the IMWL requires employers to pay employees one and

one-half times their regular rate for all hours worked over forty (40) per work week. Section 105/12 of the IMWL provides that employers who violate the provisions of this act are liable to affected employees for unpaid wages, costs, attorney's fees, damages of 2% of the amount of any such underpayment for each month following the date of underpayments and other appropriate relief.

64. Defendants engaged in a practice of violating the IMWL by misclassifying Named Plaintiff and similarly situated employees as "exempt," and thereby failing and refusing to pay them the overtime wage compensation as required by law and in accordance with Section 105/4(a) of the IMWL.

65. Named Plaintiff and members of the IMWL class are not subject to any exemption.

66. Defendants failed to create or maintain accurate records of the time Named Plaintiff and the IMWL class worked in violation of the IMWL, 820 ILCS § 105/8.

67. As a result of Defendants' violations of the IMWL, Named Plaintiff and the IMWL class have suffered and will continue to suffer a loss of income and other damages.

68. As a result of Defendants' unlawful acts, they are liable to Named Plaintiff and other IMWL class members for actual damages, statutory damages and equitable relief, as well as reasonable attorneys' fees, costs and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MONIQUE BROWN, individually and on behalf of all others similarly situated, by and through her attorneys, demands judgment against the Defendants, and each of them, jointly and severally, and in favor of Plaintiff and all others similarly situated, for a sum that will properly, adequately and completely compensate Plaintiffs for the nature, extent and duration of their damages, the costs of this action and as follows:

A. Certify a collective action under Count I and designate Named Plaintiff as representative of all those employees similarly situated;

B. Order Defendants to furnish to counsel a list of all names, telephone numbers, home addresses and email addresses of all Clinicians who have worked for the Defendants within the last three years;

C. Authorize Plaintiffs' counsel to issue notice at the earliest possible time to all Clinicians who have worked for Defendants within the last three years, informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit;

D. Certify a class action under Count II;

E. Appoint Stephan Zouras, LLP as counsel for the Plaintiffs under Rule 23(g);

F. Declare and find that Defendants committed one or more of the following acts:

   i. Violated the overtime provisions of the FLSA by misclassifying Plaintiff and similarly situated employees who opt-in to this action as exempt from overtime compensation;

   ii. Willfully violated provisions of the FLSA; and

   iii. Violated the overtime provisions of the IMWL by misclassifying Plaintiff and similarly situated employees as exempt from overtime compensation.

G. Award compensatory damages in the amount of one and one-half times Plaintiff's and similarly situated persons' regular rate of pay for all time they worked in excess of forty (40) hours per week under the FLSA;

H. Award 2% per month interest on all overtime compensation due accruing from the date such amounts were due until it is paid under the IMWL;

I. Award liquidated damages in an amount equal to the amount of unpaid overtime compensation found due under the FLSA;

J. Award all costs and reasonable attorneys' fees incurred prosecuting this claim under the FLSA and IMWL;

K. Grant leave to amend to add claims under applicable state and federal laws;

L. Grant leave to add additional plaintiffs by motion, by the filing of written consent forms, or by any other method approved by the Court; and,

M. For such further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: November 16, 2016

Respectfully Submitted,

/s/ James B. Zouras
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ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2016, a true and correct copy of the foregoing **COMPLAINT** was filed via this Court's CM/ECF system.

/s/ James B. Zouras
James B. Zouras